



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2014

Ms. J. Diaz
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2014-09941

Dear Ms. Diaz:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 525450 (ORR# 2014-02182).

The Dallas Police Department (the "department") received a request for information pertaining to a specified internal affairs investigation. You state the department has released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

We note the information we have marked is not responsive to the instant request for information because it was created after the request for information was received. This

¹We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the exception you claim can provide a compelling reason to overcome the presumption of openness, we will consider your claimed exception for the submitted information. *See id.* §§ 552.007, .302, .352.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.³

Next, we note some of the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2014-03922 (2014), 2014-06396 (2014), and 2014-07728 (2014). We have no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, the department must continue to rely on Open Records Letter Nos. 2014-03922, 2014-06396, and 2014-07728 as previous determinations and withhold or release the information at issue, which we have marked, in accordance with those rulings. We will address your arguments against the release of the submitted information not encompassed by those rulings.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in the *Ellen* decision contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating the public’s interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held “the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released.” *Id.* Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, along with the statement of the accused. However, the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. *See* Open Records Decision Nos. 393 (1983), 339 (1982). However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of victims and witnesses must still be redacted from the statements. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. We also

³As our determination is dispositive, we need not address your remaining argument against disclosure of this information.

note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

In this instance, the information at issue is related to a sexual harassment investigation and there is no indication there was a summary when the department received the request. Therefore, the department must generally release the information pertaining to the investigation. However, this information contains the identities of the alleged sexual harassment victim and witnesses. Therefore, the department must withhold the identifying information of the alleged victim and witnesses, which we have indicated, under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. See 840 S.W.2d at 525. However, we find the department has not demonstrated how any portion of the remaining information identifies a victim or witness of sexual harassment and, thus, has not demonstrated the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy and *Ellen*.

We note some of the remaining information is subject to section 552.117 of the Government Code.⁴ Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.⁵ Gov't Code § 552.117(a)(2). Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

In summary, the department must continue to rely on Open Records Letter Nos. 2014-03922, 2014-06396, and 2014-07728 as previous determinations and withhold or release the information at issue, which we have marked, in accordance with those rulings. The department must withhold the identifying information of the alleged victim and witnesses, which we have indicated, under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen* and the information we have marked under section 552.117(a)(2) of the Government Code. The department must release the remaining responsive information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

⁵Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 525450

Enc. Submitted documents

c: Requestor
(w/o enclosures)